



K.U. v. Finland

K.U. v. Fin., App. No. 2872/02, 48 Eur. H.R. Rep. 52 (2009).

Country: Finland

Region: Europe

Year: 2008

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Child and adolescent health, Mental health, Sexual and reproductive health

Human Rights: Right to due process/fair trial, Right to family life

Facts

An unknown person placed an advertisement of a sexual nature on a dating website in the name of the applicant, who was 12 years old at the time, without his knowledge, mentioning private information such as his age, year of birth, physical characteristics and his telephone number, which was accurate except for one digit. In the advertisement, it was claimed that he was looking for an intimate relationship with a boy of his age or older. Applicant became aware of the announcement on the Internet when he received an e-mail from a man pursuing an encounter with him. The police and courts could not require the Internet provider to identify the person who had posted the ad due to legislation in place at the time.

Relying on Article 8 (respect for private and family life) and 13 (right to an effective remedy), the applicant claimed that his private life had been invaded and that no effective remedy existed under Finnish law to reveal the identity of whoever had posted the ad on the Internet dating site.

Decision and Reasoning

The Court stressed the importance of the issue at hand as the act in question was criminal, and it made a minor the target for approaches by pedophiles. In the Court's opinion, States have a positive obligation inherent in Article 8 of the Convention to effectively criminalize offences as the existence of an offence has limited deterrent effects if there is no means to identify the offender and bring him or her to justice. Where the physical and moral welfare of a child is threatened, this imperative assumes even greater importance. It highlighted the requirement that States keep pace with modern technology, such as the Internet, while safeguarding investigative methods that respect the requirements of due process. According to the Court, freedom of expression and confidentiality of communications, while essential, cannot be absolute and must yield on occasion to other imperatives, such as the prevention of disorder, crime, or the protection of the rights and freedoms of others. The Court considered that practical and effective protection of the applicant required effective steps be taken to identify and prosecute the perpetrator, that is, the person who placed the advertisement. In the instant case such protection was not afforded.

Having regard for its decision regarding Article 8 (respect for private and family life), the Court considered it unnecessary to address Article 13 (right to an effective remedy).

Decision Excerpts

"42. The Court reiterates that, although the object of Article 8 is essentially to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life (see *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, ¶ 32)."

"46. The Government conceded that at the time the operator of the server could not be ordered to provide information identifying the offender. They argued that protection was provided by the mere existence of the criminal offence of malicious misrepresentation and by the possibility of bringing criminal charges or an action for damages against the server operator. As to the former, the Court notes that the existence of an offence has limited deterrent effects if there is no means to identify the actual offender and to bring him to justice. Here, the Court notes that it has not excluded the possibility that the State's positive obligations under Article 8 to safeguard the individual's physical or moral integrity may extend to questions relating to the effectiveness of a criminal investigation even where the criminal liability of agents of the State is not at issue

(see *Osman v. the United Kingdom*, judgment of 28 October 1998, Reports of Judgments and Decisions 1998-VIII, ¶ 128). For the Court, States have a positive obligation inherent in Article 8 of the Convention to criminalise offences against the person, including attempted offences, and to reinforce the deterrent effect of criminalisation by applying criminal-law provisions in practice through effective investigation and prosecution (see, *mutatis mutandis*, *M.C. v. Bulgaria*, cited above, ¶ 153). Where the physical and moral welfare of a child is threatened such injunction assumes even greater importance. The Court recalls in this connection that sexual abuse is unquestionably an abhorrent type of wrongdoing, with debilitating effects on its victims. Children and other vulnerable individuals are entitled to State protection, in the form of effective deterrence, from such grave types of interference with essential aspects of their private lives (see *Stubbings and Others v. the United Kingdom*, 22 October 1996, ¶ 64, Reports 1996-IV)."

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